

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

HEARING OFFICER DIRECTIVE

DOCKET NOS. [2017-370-E](#), [2017-207-E](#), and [2017-305-E](#) ORDER NO. 2018-149-H

OCTOBER 19, 2018

David Butler
Hearing Officer

DOCKET DESCRIPTION:

Docket No. 2017-370-E – Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans

Docket No. 2017-207-E – Friends of the Earth and Sierra Club, Complainant/Petitioner v. South Carolina Electric & Gas Company, Defendant/Respondent

Docket No. 2017-305-E – Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920

MATTER UNDER CONSIDERATION:

Request for Clarification and/or Modification of Order No. 2018-140-H

HEARING OFFICER ACTION:

This matter comes before the Hearing Officer on the Request for Clarification and/or Modification of Order No. 2018-140-H, which was filed by the Office of Regulatory Staff (“ORS”). A telephone conference was held with various party representatives on Thursday, October 18, 2018 at 2:00 PM. During that conference, ORS evidenced a concern that there may be a misunderstanding that ORS’s Rebuttal testimony in Docket No. 2017-305-E is limited to two witnesses as stated in Order No. 2018-140-H. Also, in a letter dated October, 15, 2018, ORS stated for the first time its plan and intent is to incorporate by reference the testimony ORS submitted in Docket No. 2017-370-E on September 25, 2017, for all three dockets. In addition, ORS noted that it may choose to utilize testimony of those witnesses identified on the list of witnesses submitted on October 15, 2018, as required by Order No. 2018-130-H. ORS stated a belief that if the witnesses are presented as presently listed in

Order No. 2018-140-H, that ORS will have to present its witnesses twice and that the hearing would be elongated.

First, for clarification, it was not the intent of the Hearing Officer to have ORS present all of its witnesses twice. The Hearing Officer was unaware that ORS intended to adopt other testimony in the 2017-305-E Docket. Even so, as an alternative plan for the order of presentation of witnesses, ORS proposed the following, listed by parties: 1) Friends of the Earth/Sierra Club; 2) ORS; 3) Intervenors; and 4) South Carolina Electric and Gas Company/Dominion (“SCE&G/Dominion”). Under the proposal, all parties’ witnesses will present all pre-filed testimony in all dockets at once. The parties participating in the telephone conference did not object to the proposed order of witnesses. The Hearing Officer is also amenable to the proposal. Accordingly, Order No. 2018-140-H is hereby modified to adopt the ORS proposal for the general order of witnesses as described above.

Another matter raised during the telephone conference by counsel for Dominion Energy was the proposal that Order No. 2018-147-H be modified from the present holding that non-pre-filed witnesses/depositions may only be presented in the proceeding after all pre-filed witnesses have been presented, unless permission to deviate from this policy is expressly granted by the Chairman. The reasoning for the proposed modification is counsel’s statement that it may be desirable to supplement a party’s pre-filed testimony with either deposition testimony or non-pre-filed witnesses as part of a party’s case in chief. To do otherwise, according to counsel, could, among other things, create inconvenience for a party. Although other parties on the conference call apparently agree with this assertion, the request for modification of Order No. 2018-147-H is denied. As was stated in Order No. 2018-140-H, the Order of Presentation of witnesses is clearly within the Commission’s discretion. See the Editor’s Note to S.C. Code Ann. Section 58-3-225, which refers to 1980 Act No. 440, Section 1, which states in part that “...in light of the importance of the Commission’s functions, all proceedings before the Commission should be conducted in the most equitable, efficient, and dignified manner.” This provision recognizes the importance of the Commission’s functions and its effect on the daily lives of the citizens of South Carolina, and supports the power of the Commission to conduct its hearings in the manner that provides the parties and the public with an efficient tribunal process.

The Commission’s right to hear the pre-filed testimony in the case first in an orderly fashion is clearly within the goal of conducting the proceedings in the most efficient manner. Hearing the pre-filed testimony first will allow the Commission to determine what non-pre-filed testimony may be duplicative, and potentially reduce the need for the presentation of some of the non-pre-filed testimony. Further, hearing the pre-filed testimony first is consistent with the Commission’s normal procedures that require such pre-filings for clarity and transparency regarding the presentation of hearing topics. Accordingly, the request to

modify the procedure set out in Order No. 2017-147-H is denied, and the Commission will hear the pre-filed testimony prior to the non-pre-filed and deposition testimony, unless permission to deviate from this policy is granted by the Chairman. Such permission will likely be sparingly granted.

On a related matter, the discussion of presenting so many potential non-pre-filed witnesses concerns this Hearing Officer. Non-pre-filed witnesses have been presented only sparingly in past Commission proceedings. One reason that such witnesses have been used only sparingly is that non-pre-filed testimony moves the proceedings away from the benefits of pre-filed testimony as discussed above. In order to limit that impact, any witness listed in the parties' October 25, 2018 final list of non-pre-filed witnesses must also be specifically listed in the pre-hearing brief, along with a statement of the substance of the testimony being sought from each such witness. Failure to adequately and specifically identify the topics for which the witness has been listed by a party may result in exclusion of the witness or result in barring such witness from testifying as to any unspecified topic.

Further, during the conference call, counsel for Friends of the Earth/Sierra Club also raised the issue of a "good cause" exception to the "pre-filed testimony to be heard first" rule, for reply to issues raised that were not revealed in advance. No such "unknown information" should be raised during the pre-filed testimony portion of the hearing, since the purpose of the pre-filing rule is to put all parties and the Commission on notice as to what will be stated in testimony and presented in exhibits. For this reason, no "good cause" exception need exist during the pre-filed portion of the case. Concerning the non-pre-filed witness portion of the case, as noted above, permission to deviate from this policy must be expressly granted by the Chairman. The granting of such an exception would be discretionary with the Chairman, but would likely be granted only in unusual circumstances.

This ends the Hearing Officer's Directive.